

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
PETER ARMBRUSTER,)
MARK WOGSLAND, and)
BRET NAGGS,)
Defendants.)
Case No. 18-CR-130-MFK

GOVERNMENT'S PROPOSED AMENDMENT TO JURY INSTRUCTION

The United States of America, by and through counsel of record, respectfully moves to amend the instruction for Counts 11, 12, and 13, which charge the defendants with securities fraud under 18 U.S.C. § 1348. Out of an abundance of caution, the government recommends that the Court append the following language to the first element of this instruction, which is found on page 29 of the Court's proposed instructions.

A scheme to defraud must be material, which means it is capable of influencing the decision of the persons to whom it is addressed.

While the law remains unsettled on materiality under 18 U.S.C. § 1348(1), the government recommends that additional mention of materiality in this instruction is the prudent course. *See generally United States v. Coscia*, 866 F.3d 782, 799 n.70 (7th Cir. 2017).

Date: July 22, 2021 Respectfully submitted,

/s/

Kyle C. Hankey
Emily C. Scruggs
Justin D. Weitz
Acting Principal Assistant Chief
Fraud Section, Criminal Division
U.S. Department of Justice

CERTIFICATE OF SERVICE

I, Justin Weitz, certify that the foregoing has been served on all attorneys of record in the above-captioned case, either via the CM/ECF electronic filing system or via email.

By: /s/ Justin D. Weitz
JUSTIN D. WEITZ
Acting Principal Assistant Chief
Criminal Division, Fraud Section
U.S. Department of Justice

Date: July 22, 2021